

EXHIBIT "5"

AO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT**

DISTRICT OF

Colorado

USA Technologies, Inc.,
Plaintiff,
V.

SUBPOENA IN A CIVIL CASE

John Doe and Jane Doe (anonymous internet website
bloggers operating as Vendician, USATsucks, Hdumasse and
Vendcard,
Defendants.

Case Number:¹ 09-661

TO: Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, CO 80021

- ☐ **YOU ARE COMMANDED** to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All documents which will identify the company who leases Internet Protocol to the individual(s) operating as user identification "Vendician", who has posted the following message (see attached list) on Yahoo!'s email message board for USA Technologies, Inc.

PLACE

DATE AND TIME

Lurio & Associates, P.C., 2005 Market Street, Suite 3320, Philadelphia, PA 19103

within 20 days of service

- ☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for Plaintiff

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Margaret Sherry Lurio, Esquire, Lurio & Associates, P.C., 2005 Market Street, Suite 3320, Phila., PA 19103 (215) 665-9300

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

USA Technologies, Inc. v. John Doe and Jane Doe (anonymous internet website bloggers operating as Vendician, USATsucks, Hdumasse and Vendcard)

U.S.D.C., E.D. Pa, No. 09-661

ATTACHMENT SHEET FOR SUBPOENA
DIRECTED TO LEVEL 3 COMMUNICATIONS, INC.

Messages posted by "Vendician", including message posted on January 25, 2009 at 08:53 P.M. on Yahoo!'s Message Board for USA Technologies, Inc. at 06:50 P.M. titled "PCI?!?!". The body of the message is "So USA Tech was spending big bucks on both PCI and SOX and I have yet to see the results. Knowing their (and foxy's) affinity for press releases, I am deeply troubled that compliance appears not to have been achieved. I heard that a plan was in place in mid '07 to achieve both, and then.....nothing. My guess is that the one running at least one of the projects was rif'd in rounds 1 or 2. That would fit the profile of both the person asked to leave (saying 'let go' implies they were hoping to leave) and the decision makers for their choices as if that were also surprising. Anyone have an update since this affects every single customer of this company?" The information provided by Yahoo! for Vendician listing the IP addresses is attached hereto as Exhibit "A". Vendician utilized two IP addresses: 69.142.64.96 and 65.89.178.10.

EXHIBIT "A"

YAHOO! ACCOUNT MANAGEMENT TOOL

Login Name: vendician
GUID: AJBMCAX23LSDGCPBZJ2JZ3JMIA
(Alternate) Email Address:
Registration IP address: 69.142.64.96
Account Created (reg): Mon Jan 21 15:12:05 2008 GMT
Other Identities: vendician
Full Name Mr Michael Robinson
Address1:
Address2:
City:
State, territory or province:
Country: United States
Zip/Postal Code: 19382
Phone:
Time Zone:
Birthday: May 29, 1943
Gender: Male
Occupation:
Business Name:
Business Address:
Business City:
Business State:
Business Country: us
Business Zip:
Business Phone:
Business Email:
Additional IP Addresses: Mon Jan 21 15:12:05 2008 GMT 69.142.64.96
Account Status: Deactivated
Deactivation Date: Wed Feb 04 00:12:20 2009 GMT

YAHOO! ACCOUNT MANAGEMENT TOOL

Login Name: vendician
GUID: AJBMCAX23LSDGCPBZJ2JZ3JMIA
(Alternate) Email Address:
Registration IP address: 69.142.64.96
Account Created (reg): Mon Jan 21 15:12:05 2008 GMT
Other Identities: vendician
Full Name Mr Michael Robinson
Address1:
Address2:
City:
State, territory or province:
Country: United States
Zip/Postal Code: 19382
Phone:
Time Zone:
Birthday: May 29, 1943
Gender: Male
Occupation:
Business Name:
Business Address:
Business City:
Business State:
Business Country: us
Business Zip:
Business Phone:
Business Email:
Additional IP Addresses: Mon Jan 21 15:12:05 2008 GMT 69.142.64.96
Account Status: Deactivated
Deactivation Date: Wed Feb 04 00:12:20 2009 GMT

Search for vendician
Date Range 14-Apr-2008 00:00:00 / 12-Apr-2009 23:59:59
Total Results 13

Yahoo ID	IP Address	Login Time
vendician	69.142.64.96	Mon 01:32:10 (GMT) 26-Jan-2009
vendician	69.142.64.96	Thu 16:05:55 (GMT) 22-Jan-2009
vendician	69.142.64.96	Sun 06:21:04 (GMT) 18-Jan-2009
vendician	65.89.178.10	Fri 15:58:12 (GMT) 09-Jan-2009
vendician	69.142.64.96	Sat 15:33:05 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 15:31:46 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 14:34:57 (GMT) 11-Oct-2008
vendician	69.142.64.96	Fri 12:15:44 (GMT) 25-Jul-2008
vendician	69.142.64.96	Fri 11:58:15 (GMT) 20-Jun-2008
vendician	65.89.178.10	Mon 16:44:05 (GMT) 16-Jun-2008
vendician	69.142.64.96	Tue 20:54:52 (GMT) 20-May-2008
vendician	69.142.64.96	Tue 21:27:09 (GMT) 22-Apr-2008
vendician	69.142.64.96	Fri 19:42:25 (GMT) 18-Apr-2008

Search for vendician
 Date Range 31-Mar-2008 00:00:00 / 29-Mar-2009 23:59:59
 Total Results 28

Yahoo ID	IP Address	Login Time
vendician	69.142.64.96	Mon 01:32:10 (GMT) 26-Jan-2009
vendician	69.142.64.96	Thu 16:05:55 (GMT) 22-Jan-2009
vendician	69.142.64.96	Sun 06:21:04 (GMT) 18-Jan-2009
vendician	65.89.178.10	Fri 15:58:12 (GMT) 09-Jan-2009
vendician	69.142.64.96	Sat 15:33:05 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 15:31:46 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 14:34:57 (GMT) 11-Oct-2008
vendician	69.142.64.96	Fri 12:15:44 (GMT) 25-Jul-2008
vendician	69.142.64.96	Fri 11:58:15 (GMT) 20-Jun-2008
vendician	65.89.178.10	Mon 16:44:05 (GMT) 16-Jun-2008
vendician	69.142.64.96	Tue 20:54:52 (GMT) 20-May-2008
vendician	69.142.64.96	Tue 21:27:09 (GMT) 22-Apr-2008
vendician	69.142.64.96	Fri 19:42:25 (GMT) 18-Apr-2008
vendician	69.142.64.96	Fri 21:12:53 (GMT) 11-Apr-2008
vendician	69.142.64.96	Fri 19:15:57 (GMT) 11-Apr-2008
vendician	69.142.64.96	Thu 14:03:01 (GMT) 10-Apr-2008
vendician	69.142.64.96	Tue 21:15:42 (GMT) 08-Apr-2008
vendician	69.142.64.96	Tue 16:26:45 (GMT) 08-Apr-2008
vendician	69.142.64.96	Mon 14:41:14 (GMT) 07-Apr-2008
vendician	69.142.64.96	Sun 15:46:35 (GMT) 06-Apr-2008
vendician	69.142.64.96	Sun 13:29:57 (GMT) 06-Apr-2008
vendician	69.142.64.96	Sat 16:20:49 (GMT) 05-Apr-2008
vendician	69.142.64.96	Sat 16:11:29 (GMT) 05-Apr-2008
vendician	69.142.64.96	Fri 21:08:02 (GMT) 04-Apr-2008
vendician	69.142.64.96	Fri 20:25:02 (GMT) 04-Apr-2008
vendician	69.142.64.96	Fri 15:11:52 (GMT) 04-Apr-2008
vendician	69.142.64.96	Wed 21:34:15 (GMT) 02-Apr-2008
vendician	69.142.64.96	Tue 15:46:25 (GMT) 01-Apr-2008

Search for vendician
Date Range 08-Apr-2008 00:00:00 / 06-Apr-2009 23:59:59
Total Results 18

Yahoo ID	IP Address	Login Time
vendician	69.142.64.96	Mon 01:32:10 (GMT) 26-Jan-2009
vendician	69.142.64.96	Thu 16:05:55 (GMT) 22-Jan-2009
vendician	69.142.64.96	Sun 06:21:04 (GMT) 18-Jan-2009
vendician	65.89.178.10	Fri 15:58:12 (GMT) 09-Jan-2009
vendician	69.142.64.96	Sat 15:33:05 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 15:31:46 (GMT) 03-Jan-2009
vendician	69.142.64.96	Sat 14:34:57 (GMT) 11-Oct-2008
vendician	69.142.64.96	Fri 12:15:44 (GMT) 25-Jul-2008
vendician	69.142.64.96	Fri 11:58:15 (GMT) 20-Jun-2008
vendician	65.89.178.10	Mon 16:44:05 (GMT) 16-Jun-2008
vendician	69.142.64.96	Tue 20:54:52 (GMT) 20-May-2008
vendician	69.142.64.96	Tue 21:27:09 (GMT) 22-Apr-2008
vendician	69.142.64.96	Fri 19:42:25 (GMT) 18-Apr-2008
vendician	69.142.64.96	Fri 21:12:53 (GMT) 11-Apr-2008
vendician	69.142.64.96	Fri 19:15:57 (GMT) 11-Apr-2008
vendician	69.142.64.96	Thu 14:03:01 (GMT) 10-Apr-2008
vendician	69.142.64.96	Tue 21:15:42 (GMT) 08-Apr-2008
vendician	69.142.64.96	Tue 16:26:45 (GMT) 08-Apr-2008